

John K. Simpson, ISB #4242  
Travis L. Thompson, ISB #6168  
Abigail R. Bitzenburg, ISB #12198

**MARTEN LAW LLP**

163 Second Avenue West

P.O. Box 63

Twin Falls, Idaho 83303-0063

Telephone: (208) 733-0700

Email: [jsimpson@martenlaw.com](mailto:jsimpson@martenlaw.com)

[tthompson@martenlaw.com](mailto:tthompson@martenlaw.com)

[abitzenburg@martenlaw.com](mailto:abitzenburg@martenlaw.com)

Norman M. Semanko, ISB #4761

Garrett M. Kitamura, ISB #11502

**PARSONS BEHLE & LATIMER**

800 W. Main St. Suite 1300

Boise, Idaho 83702

Telephone: (208) 562-4900

Email: [nsemanko@parsonsbehle.com](mailto:nsemanko@parsonsbehle.com)

[gkitamura@parsonsbehle.com](mailto:gkitamura@parsonsbehle.com)

*Attorneys for American Falls Reservoir*

*District #2 and Minidoka Irrigation District*

*Attorneys for A&B Irrigation District, Burley  
Irrigation District, Milner Irrigation District,  
North Side Canal Company, and Twin Falls  
Canal Company*

RECEIVED  
MAR 31 2025  
DEPT. OF WATER RESOURCES  
SOUTHERN REGION

**BEFORE THE DEPARTMENT OF WATER RESOURCES**

**OF THE STATE OF IDAHO**

IN THE MATTER OF THE MITIGATION PLAN  
OF FALLS WATER CO. INC.

Docket No.: CM-MP-2024-004

~~Docket No.: CM-DC-2010-001~~

IN THE MATTER OF THE DISTRIBUTION OF  
WATER TO VARIOUS WATER RIGHTS HELD  
BY AND FOR THE BENEFIT OF A&B  
IRRIGATION DISTRICT, AMERICAN FALLS  
RESERVOIR DISTRICT #2, BURLEY  
IRRIGATION DISTRICT, MILNER  
IRRIGATION DISTRICT, MINIDOKA  
IRRIGATION DISTRICT, NORTH SIDE CANAL  
COMPANY, AND TWIN FALLS CANAL  
COMPANY

**SURFACE WATER COALITION'S JOINT  
PROTEST**

COME NOW, A&B IRRIGATION DISTRICT, AMERICAN FALLS RESERVOIR  
DISTRICT #2, BURLEY IRRIGATION DISTRICT, MILNER IRRIGATION DISTRICT,  
MINIDOKA IRRIGATION DISTRICT, NORTH SIDE CANAL COMPANY and TWIN FALLS  
CANAL COMPANY (hereinafter referred to as the "Coalition" or "SWC"), by and through their

attorneys of record, Marten Law LLP and Parsons Behle & Latimer, and hereby file this *Joint Protest* to the approval of the *Falls Water Co., Inc.*'s *CM Rule 43 Mitigation Plan* ("Mitigation Plan"), filed with the Idaho Department of Water Resources ("Department") on November 22, 2024 by Falls Water Co. Inc. ("Falls Water") pursuant to the provisions of Conjunctive Management Rule 43, IDWR Procedural Rule 250, and other applicable law.

The SWC is authorized to oppose the Mitigation Plan because the Plan attempts to mitigate injury to the SWC's senior surface water rights caused by Falls Water's junior priority ground water rights. The initial bases for SWC's *Protest* are as follows:

1. The proposed Mitigation Plan purports to adopt, without the Coalition's consent, a formula for mitigation that is represented to be similar to the Cities' mitigation plan approved by IDWR on April 9, 2019. Whether this proposed formula is appropriate or agreeable to the Coalition has yet to be determined.

2. The Mitigation Plan does not identify, with particularity, the water rights' current use and potential injury to the Coalition's senior surface water rights. Falls Water lists a "collective pumping for 2023" of "5,501 acre-feet" without specifying the location and which water rights were used for what purposes. No other information is supplied regarding Falls Water's water right use.

3. The Mitigation Plan does not identify, with particularity, circumstances or limitations on the availability of the storage water supply proposed to be used for mitigation. Further the Mitigation Plan does not identify, with particularity, the location of the Progressive Irrigation District recharge facilities, and the dates water will be recharged for purposes of mitigation. Further, the Mitigation Plan does not provide any authorization from the Idaho Water Resource Board for purposes of recharging mitigation water in the Board's facilities.

4. The Mitigation Plan proposes to receive credit for "conversions" and "dry ups"

that are not defined with particularity, including location, water rights involved, and the estimated benefits that might accrue from the projects.

5. The Mitigation Plan proposes to receive credit for recharge of municipal effluent without any details, evidence of water rights for such purposes, or other required approvals for such a use.

6. The Mitigation Plan does not adequately identify “contingency provisions to assure protection of the senior-priority right in the event the mitigation water source becomes unavailable” and therefore violates CM Rule 43.03.c.

7. The Mitigation Plan does not identify how injury to SWC’s right to reasonable carryover storage will be addressed.

8. In general, the Mitigation Plan is vague and ambiguous, does not provide for adequate mitigation, furnishes no certainty that the mitigation water will be delivered to prevent injury, does not supply a reliable source of replacement water, could result in diversion and use of ground water at a rate beyond the reasonably anticipated average rate of future natural recharge, and otherwise fails to adequately mitigate for injury caused by Falls Water’s junior priority ground water rights.

9. For such other and further reasons as may be discovered.

DATED this 31<sup>st</sup> day of March, 2024.

**MARTEN LAW LLP**

/s/ Travis L. Thompson

John K. Simpson  
Travis L. Thompson  
Abby R. Bitzenburg

*Attorneys for A&B Irr. Dist., Burley Irr. Dist.,  
Milner Irr. Dist., North Side Canal Company, and  
Twin Falls Canal Company*

**PARSONS BEHLE & LATIMER**

/s/ Norman M. Semanko

Norman M. Semanko  
Garrett M. Kitamura

*Attorney for American Falls Reservoir District #2  
& Minidoka Irrigation District*

## CERTIFICATE OF SERVICE

I hereby certify that on this 31<sup>st</sup> day of March, 2025, I served a copy of the foregoing  
SURFACE WATER COALITION'S JOINT PROTEST, by hand-delivery to the following:

Idaho Department of Water Resources  
Southern Region  
650 Addison Ave W, Ste 500  
Twin Falls, Idaho 83301-5858

Via Email to:

Robert L. Harris  
Holden Kidwell Hahn & Crapo PLLC  
P.O. Box 50130  
Idaho Falls, Idaho 83405  
[rharris@holdenlegal.com](mailto:rharris@holdenlegal.com)

/s/ Travis L. Thompson

Travis L. Thompson